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June 10, 2002

EX PARTE PRESENTATION

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Marlene H. Dortch
Secretary
Federal Communications Commission
Portals II
445 12th Street, S.W.,
Washington, D.C. 20554

Re: Federal-State Joint Board on Universal Service proceedings on Lifeline service and
the Definition of Universal Service (CC Docket No. 96-45)

Dear Ms. Dortch:

This is to advise you that on June 10, 2002, on behalf of American Public Communications Council ("APCC"), we delivered copies of the enclosed materials to the members of the Federal-Joint Board on Universal Service ("Joint Board") and the following members of the Joint Board Staff: Matthew Brill, Daniel Gonzalez, Jordan Goldstein, Carol Matthey, Katherine Schroder, Eric Einhorn, Philip McClellan, Lori Kenyon, Carl Johnson, Joel Shifman, Greg Fogleman and David Dowds.

Sincerely,

/s/

Allan C. Hubbard

ACH/clh

Enclosures



Summary of Supplemental Questions and Answers Regarding Federal Universal Service Support For Payphones

- **Universal Service Fund (“USF”) support should be provided for all payphone lines nationwide, not just for payphone lines serving low income and high cost areas.** Americans in every social strata use payphones where a home, business or wireless phone will not suffice or is not available. While payphones are vital to low income Americans, the broad spectrum of users is equally threatened by decreasing levels of payphone deployment.
- **State public interest payphone (“PIP”) programs are neither intended to nor capable of adequately promoting the widespread deployment of payphones.** The programs are narrowly targeted to specific gaps in service and are administratively burdensome. Only about 500 PIPs currently are funded nationwide, compared with the most recent net annual loss in payphone deployment of approximately 140,000 payphones.
- **Pressures to constrain USF expansion for new or existing services should not preclude a modest increase to stabilize deployment of an existing unfunded service.** The proposed level of support for payphone lines is a fraction of what the USF currently pays in Lifeline support and will help keep in place an existing form of universal service.
- **Payphone deployment is decreasing and should be stabilized in a manner consistent with Congress’ goal of widespread deployment.** Although Congress did not specify what constitutes widespread deployment, the Commission in 1999 found that the then deployment of 2.15 million payphones was consistent with widespread deployment. Payphone deployment is shrinking and USF support is required to stabilize the number of payphones at a level already found to meet the widespread deployment standard.
- **The proposed support generally replicates existing levels.** The amount of the SLC, which is the USF support level that applies generally, was chosen because it is the federal portion of NTS cost recovery, as was the case with Lifeline support. While not based on cost studies, the \$5.00 monthly supplemental support for payphone lines in high cost areas is required to ensure existing levels of deployment in high cost areas.
- **Payphone service satisfies the statutory criterion that the service has “been subscribed to by a substantial majority of residential customers.”** Most residential consumers use payphone service to supplement residential services. A residential consumer “subscribes” to the service by placing a call from a payphone. Moreover, the criteria need not be met, just considered.
- **The definition proceeding is an appropriate proceeding in which to consider USF support for payphones.** The Joint Board should recommend adding payphone service to the definition of universal service. Steps to implement the recommendation can be incorporated into the rulemaking the Commission must undertake in any event to adopt any changes the Joint Board may recommend.

Supplemental Questions and Answers Regarding Federal Universal Service Support For Payphones



The American Public Communications Council (“APCC”) recently provided materials describing the need for and discussing issues related to federal universal service support for payphones. This supplemental Q. and A. clarifies and explains the proposal for USF support for payphones.

Q. Why is USF support proposed for all payphones nationwide? Should the proposed support be targeted at payphone lines serving low income and high cost areas?

A. The perception that payphones are used primarily by the poor or are needed only in low income areas is simply wrong. While payphone service may be critically important to low income Americans, particularly those without a home phone, payphones are important to all Americans regardless of their income or where they reside.

Even users of wireless service need ready access to payphones when their wireless phones are out of a service area, lose battery power or are not otherwise available for use. Of equal importance, battered women and abused children generally cannot use their home or wireless phones and must rely on payphones to make calls to shelters. Calls to drug and sex hot lines used by troubled or merely curious young people are not made from home or a wireless phone.

All of these payphone users exist in every strata of society in every neighborhood in America. They require access to payphones to meet critical needs. And even the many Americans who live in low income or high cost areas often work in urban business areas and upscale neighborhoods; they need ready access to payphones near their workplace as well as where they reside.

Consider a payphone which hypothetically requires 400 calls a month to be viable. When the call volume falls to 350 calls, and the payphone is removed, the need for those 350 other calls does not disappear; that need simply goes unmet. It is precisely in areas that are not low income where these payphones are likely to be. Wireless users will have diverted those 50 calls needed to make the payphone viable. But now the battered homemaker, or abused child, or curious teen, or stranded motorist has no phone to use. Moreover, a targeted, or needs-based, or criteria-driven program, such as the state public interest payphone programs discussed below, requires extensive administration and implementation. The inherent bias of a targeted program is to fall short, not to ensure ready access to all Americans.¹

¹ If universal service support were targeted at a narrower group of payphone lines, defining which payphones fit within that narrower group of payphone lines may be difficult. For example, if universal service support were limited to payphone lines serving single payphone locations, would lines serving two payphones located at opposite ends of a large mobile home park be eligible for support?

The Congressional mandate of “widespread deployment” of payphones, 47 USC § 276(b)(1), is not limited to residents of low income and high cost areas. The proposed support should not be targeted at low income or high cost areas (except for the proposed \$5.00 monthly supplement for payphone lines in high cost areas, as discussed below).

Q. Are the public interest payphone programs provided for under section 276(b)(2) of the Act an adequate source of universal service support for promoting the widespread deployment of payphones as separately mandated by section 276(b)(1) of the Act?

A. State public interest payphone (“PIP”) programs² are neither intended to nor capable of adequately promoting the widespread deployment of payphones. In implementing the PIP program, the Commission recognized and acknowledged the fact that the definition of a PIP is limited: “we believe it is very important to establish a basic definition of public interest payphones that is *narrowly tailored* to payphones that are truly needed for the public interest reasons enunciated in the statute,” “in the interest of public health, safety, and welfare, in locations where there would otherwise not be a payphone.”³⁴ The Commission further limited the application of the state PIP programs by prohibiting states from requiring a public interest payphone in a premises that already has a payphone, even though the contract requires the location provider to pay for the payphone. *Payphone Order* at ¶ 282.

In addition to their inherent limitations as administered, criteria driven programs (see discussion above),⁵ state public interest payphone programs, while offering a potentially valuable supplement to federal universal service funding, clearly are not sufficient to promote “widespread deployment” of payphone service nationwide. Federal universal service support is required.

Q. Is it feasible to expand the USF to support widespread deployment of payphone service in the face of projected increases in the contribution factors?

A. There can be no denying that there are overwhelming pressures to keep the size of the fund from growing. And even though the level of support proposed for universal service support for payphones is relatively modest – about \$170 million or approximately 3 percent of the total USF – there are many worthy “pleaders” before the Joint Board, including the services mentioned by the Commission in its charge to the Commission (toll services, expanded area service, prepaid).

² The Commission, in a rulemaking proceeding implementing the PIP Program and other provisions of section 276, delegated the management and funding of PIPs to the states. *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 20541, ¶¶ 264-86 (1996) (“*Payphone Order*”).

³ 47 U.S.C. § 276(b)(2).

⁴ *Payphone Order* at ¶ 281 (emphasis added).

⁵ PIP programs also are administratively complex and burdensome to establish and the criteria are difficult to apply in an equitable manner. This may explain in part why the state programs are few in number. To date, only California, Indiana and Wisconsin have funded programs (Alaska is in the process of identifying payphones that would be eligible for funding). In the aggregate, the states currently fund fewer than 500 public interest payphones. By comparison, from March 2000 to March 2001, the latest period for which FCC data on payphone deployment is available, the number of payphones deployed nationwide decreased by 140,000.

But there is one characteristic of payphone service that distinguishes it from the others. Unlike these other services, where the Joint Board is being asked to support increased levels or additional services through the USF, *consumers face a diminution* in the level of service they have received until now in payphones. USF support is thus being asked to help ensure continuation of an existing service.

The proposed level of support for payphone lines is a fraction of what the Fund currently pays in Lifeline support. Payphones provide a vital link not just for low income Americans; they offer all Americans a valuable “on demand/per use” instantly available service, “24x7x365.”

Q. What is “widespread deployment” as the term is used in section 276 of the Communications Act?

A. Congress did not specify what constitutes widespread deployment of payphones. In a 1999 order establishing the dial-around compensation rate for payphones, the Commission properly found that the then existing level of deployment – 2.15 million payphones – was consistent with Congress’s goal of widespread deployment.⁶ However, in a footnote to the order, the Commission suggested that market forces may reduce payphone deployment:

We believe, however, that . . . factors [other than the rate for dial around compensation], such as the decreasing prices for cellular and PCS service, may reduce the number of payphones. Such a reduction would be the result of a competitive marketplace.

Nothing in this footnote precludes a Joint Board recommendation, in this definition proceeding, that the number of payphones be stabilized in a manner consistent with Congress’ goal of widespread deployment. Although the statutory language and legislative history are not helpful, the rationale for widespread deployment is self evident: the desirability of ready access to the telephone network. Congress wanted people to have convenient access to a payphone when they need one. While there will of course be some fluctuation in the number of payphones, and payphones may come and go at particular locations, the “widespread deployment” goal cannot be met if there are wide swings or further drastic reductions in the level of payphone deployment already found by the Commission to meet the widespread deployment standard.

Q. What are the bases for the specific dollar amounts in the proposed subsidy (i.e., a monthly amount equal to the SLC for all payphone lines and an additional \$5 per month for each payphone line in high cost areas) and will those dollar amounts accomplish the goal of ensuring widespread deployment?

A. The specific dollar amounts in the proposed support are not based on cost studies. The SLC was chosen because it is the federal portion of NTS cost recovery. It seemed appropriate to target federal USF support at interstate NTS, particularly because so much of payphone costs are NTS. In this regard, we note that the Commission did not rely on cost studies to determine the level of support for Lifeline service, but tied the support to the SLC. Further, many payphone service providers believe SLC is the

⁶ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Third Report and Order, 14 FCC Rcd 2545, ¶ 141, n.390. (“current deployment of [2.15 million] payphones . . . is consistent with Congress’s goal of widespread deployment of payphones”).

support level required to help stabilize or at least slow the accelerating rate at which payphone deployment is being reduced.

As for the \$5.00 monthly supplemental support for each payphone line in high cost areas, these payphones tend to operate more closely at the margin and are more vulnerable to removal with the loss of even modest call volume. As such, payphone lines in high cost areas require some additional level of support to ensure existing levels of deployment. There are relatively few payphone lines in high cost areas (APCC estimates that there are approximately 150,000 such lines, roughly 7.5 percent of the nearly 2 million payphone lines deployed nationwide), and thus the cost of this support is modest. Support at a level of \$5.00 per high cost payphone line per month for 150,000 lines equals \$750,000 per month or \$9 million per year, or .16 percent (.0016) of the \$5.5 billion Universal Service Fund.

Q. Does payphone service satisfy the statutory criterion in section 254(c)(1)(B) that the service has “been subscribed to by a substantial majority of residential customers”?

A. Section 254(c) provides that “the Joint Board, in recommending, and the Commission, in establishing the definition of the services that are supported by Federal universal service support mechanisms shall consider the extent to which such telecommunications services” meet four criteria. Of the four criteria, only one raises any question as to whether it is satisfied by payphone service, namely, whether payphone service has, “through the operation of market choices by consumers, been subscribed to by a substantial majority of residential customers.”⁷

While there is no way for residential customers to subscribe to payphone service in the traditional sense (i.e., by ordering the service, paying invoices that cover an installation charge and recurring monthly charges), virtually all residential consumers at some point in time and through the operation of market choices make use of payphone service is an “on demand/per use” supplement to residential services. The way a residential consumer “subscribes” to payphone service is by placing a call from a payphone. Thus, the intent of this criterion is met. Moreover, as the statutory language makes clear, the criteria need not be met, just considered.⁸

Q. Are the Joint Board proceedings on Lifeline service and the definition of universal service appropriate proceedings for considering universal service support for payphones?

A. Either or both of these proceedings can be the vehicle for considering universal service support for payphones. The proceeding on the definition of universal service is better. It is broader in scope. The Commission left it to the Joint Board to consider whether and which other services should be included in the definition.⁹ The definitions proceeding is more appropriate than the Lifeline proceeding in another important respect. Universal service support for payphones, while of particularly vital

⁷ 47 U.S.C. § 254(c)(1)(B).

⁸ As the Commission stated, “all four criteria enumerated in section 254(c)(1) must be considered, but not necessarily met, before a service may be included within the general definition of universal service” *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8809, ¶ 61.

⁹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 15 FCC Rcd 25257 (2001) (*Referral Order*).

importance for low income Americans, is of importance to all Americans no matter what their income status. This latter point bears particular importance and is the subject of a separate Q. and A. above.

Further the current Joint Board proceeding on the definition of universal service may be the only proceeding available for several years to consider the need for such support. The Commission has adopted a “periodic” approach to reviewing the definition of universal service¹⁰ and this first “periodic” review is being undertaken five years after the first definition was adopted. Five years is too long to wait given the accelerating rate at which payphones are disappearing from the nation’s landscape.¹¹

Q. If the Joint Board recommends that the definition of universal service be revised to include payphone service, will a separate proceeding be necessary to establish a new universal service support funding mechanism for payphones?

A. No. Although a separate proceeding could be initiated, the Commission must initiate a rulemaking to consider any revisions to the definition of universal service recommended by the Joint Board. Any revisions necessary to implement the proposed payphone support mechanism can be a part of that rulemaking.¹²

The Joint Board should recommend, and the Commission should initiate, a notice of proposed rulemaking that would add payphone service to the definition of universal service and establish a mechanism for universal service support for payphones.

¹⁰ The Commission adopted a “periodic approach” as “a reasonable balance between too frequent reviews, which could cause unnecessary expenditure of resources, and sporadic evaluation, which may not produce a definition of universal service that is consistent with the principles enumerated in section 254(b) and does not reflect the definitional criteria of section 254(c).” *Referral Order* at 25257 n.4, quoting *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, First Report and Order, 12 FCC Rcd 8776, 8835 (1997).

¹¹ There is an extremely narrow and limited sense in which a handful of payphone lines are currently covered by USF support. Network access lines used to provide payphone service are eligible for and should receive the same support as any other line (say a business line) in a high cost area. But there is no support anywhere for payphones lines *because* they are payphone lines.

¹² The Commission often refers matters to the Joint Board by means of a notice of proposed rulemaking, but in the case of the definition and Lifeline issues the Commission simply adopted an order requesting the Joint Board to review and make recommendations regarding those issues. Because Lifeline service and the definition of universal service both are embodied in the Commission’s rules, any recommendations for changes would require the Commission to follow-up by adopting a notice of proposed rulemaking.